

No. 11168

United States
Circuit Court of Appeals
For the Ninth Circuit.

PARROTT & COMPANY, a Corporation,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

FILED

NOV 30 1945

PAUL P. O'BRIEN,
CLERK

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Appeal:	
Bond for Costs on.....	20
Certificate of Clerk to Transcript of Rec- ord on.....	23
Designation of Contents of Record on....	22
Notice of.....	20
Order Extending Time to Docket.....	23
Statement of Points on.....	25
Bond for Costs on Appeal.....	20
Certificate of Clerk to Transcript of Record on Appeal	23
Complaint	2
Designation of Contents of Record on Appeal.	22
Motion to Dismiss.....	19
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	20
Order Extending Time to Docket Appeal....	23
Order Granting Motion to Dismiss.....	19
Statement of Points on Appeal.....	25

NAMES AND ADDRESSES OF ATTORNEYS

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In the United States District Court in and for the
Southern Division of the Northern District of
California

No. 24255-G

PARROTT & COMPANY, a corporation,
Plaintiff,

v.

THE UNITED STATES OF AMERICA,
Defendant.

COMPLAINT

This suit is for refund of internal-revenue taxes which have been illegally collected, and is brought under the Tucker Act of 1887, 28 USC 41 (20), and the Judicial Code, 28 USC 762. It is founded upon laws of Congress and upon regulations of an executive department, and arises out of:

- (a) Virgin Islands Act of March 3, 1917, section 3, 39 Stat. 1133, 48 USC 1394, relating to internal-revenue taxes upon Virgin Islands products.
- (b) Revenue Act of 1941, section 533 (a), 26 USC 1941 supp. 2800 (a) (1), and earlier like statutes, relating to the internal tax upon distilled spirits generally.
- (c) Revenue Act of February 24, 1919, section 605, 40 Stat. 1108, 26 USC 2800 (a) (5), relating to rectified spirits.

(d) 26 USC 3254 (g), relating to rectifiers of distilled spirits. [1*]

(e) Revenue Act of February 24, 1919, section 1304, 40 Stat. 1142, 26 USC 3350 (a), relating to taxes upon Virgin Islands products.

(f) RS 3248, 26 USC 2800 (c), relating to time of attachment of tax on distilled spirits.

(g) Customs regulations of 1923, 1931, and 1937, and other Treasury directives.

(h) Trade Agreement Act of June 12, 1934, 48 Stat. 943, 19 USC 1351.

(i) Trade agreement between the United States and Haiti, effective June 3, 1935, 49 Stat. 3739, TD 47667, article II.

(j) Trade agreement between the United States and the United Kingdom, effective January 1, 1939, 54 Stat. 1897, TD 49753, articles XII and XIV.

For causes of action plaintiff alleges as follows:

I.

Parrott & Company, the plaintiff above named and hereinafter referred to as "taxpayer," is a corporation organized under the laws of the State of California, with its principal office at 320 California Street, San Francisco.

II.

Taxpayer brought into the United States from the

Virgin Islands between December 5, 1938 and November 25, 1941 seven consignments of rum in containers holding each 1 gallon or less; this rum had been made by so-called formulas 2, 3, 4, 5, 6, 7, 10, 11, and 12, and had been first distilled at over 100 proof and later by the addition of water was reduced to less than 100 proof.

III.

These consignments arrived at the port of San Francisco and were there entered for customs purposes and under the supposed authority of statute (a) supra, relating to merchandise coming into the [2] United States from Virgin Islands, taxpayer was required to pay various internal-revenue taxes to the collector of internal revenue in San Francisco through the agency of the collector of customs at the port of San Francisco, as follows:

(a) \$2.25, \$3, or \$4 per gallon, according to the revenue rate in effect at time of payment, under statute (b) supra, relating to distilled spirits generally, this tax being exacted on all of aforesaid rum, and as will be hereinafter shown a portion of this taxation was on the basis of the wine gallon and a portion on the lower basis of the proof gallon.

(b) At the rate of 30 cents per proof gallon under statute (c) supra, relating to rectified spirits this tax being exacted upon rum made according to formulas 2, 7, 10, 11, and 12, but not upon that made according to formulas 3, 4, 5, and 6.

IV.

These various transactions are identified by offi-

cial data set forth in an appendix which is attached to this complaint as a part thereof and which contains various details concerning each warehouse entry and subsidiary withdrawal entries, commercial brand, quantity, alcoholic proof, formula number, distilled-spirits tax payments, rectification-tax payments (some items excepted), and refunds claimed.

V.

Formulas 2, 7, 10, 11, and 12, specified in paragraph III (b) *supra* in reference to rum which was subjected to rectification tax, show that rum to have been produced in the following manner:

Formula 2, White Label: Sugar cane is brought to the sugar mill adjoining the distillery. The cane is ground and the resulting juice is piped to the distillery and placed in the fermenting vats. Sufficient sterilized yeast is added to cause proper fermentation. [3] The fermented beer is distilled in a continuous column still and the resulting distillate is then placed into charred oak barrels for ageing. After the rum has been aged it is withdrawn from the barrels and blended with white rum made from molasses. The blend is Government House Rum White Label, which is filtered and bottled and shipped to the United States under the brand name of Government House Rum White Label.

Formula 7, Gold Label: Molasses is placed in fermenting vats. Sufficient sterilized yeast and water added to cause proper fermentation. The fermented beer is distilled in a continuous column still and the remaining distillate is then placed into oak barrels

for ageing. After this rum has been aged, it is withdrawn from the oak barrels or oak containers and not more than 7/10 of 1 percent of sugar caramel is added to bring a uniform color. The rum is then filtered, bottled, and shipped to the United States under the brand name of Government House Rum Gold Label. Government House Rum Gold Label, therefore, is a naturally fermented and distilled liquor.

Formula 10, Government House Rum Gold Label: In the manufacture of Government House Rum Gold Label molasses is placed in fermenting vats. Sufficient water and sterilized yeast are added to cause proper fermentation. The fermented beer is distilled in a continuous column still at less than 190 degrees proof and the resultant distillate is then placed at over 100 degrees proof into newly charred oak barrels, and into re-used oak barrels, from which all char has been removed, for ageing. After sufficient ageing, rum from the reused cooperage is mixed with rum from the new charred cooperage so as to insure the proper color. This rum is then reduced with distilled water to 86 proof in the bottling storage tanks, allowed to stand for a few days, and is then filtered and bottled. The filtering process merely takes out foreign particles of dirt and sediment and does not in any way alter the rum. The rum is then bottled, labeled and shipped to the United States under the name of Government House Rum Gold Label. Government House Rum Gold Label, therefore, is a naturally fermented, distilled and aged liquor.

Formula 11, Government House Rum White Label: In the manufacture of Government House Rum White Label molasses is placed in the fermenting vats. Sufficient water and sterilized yeast are added to cause proper fermentation. The fermented beer is distilled in a continuous column still at less than 190 degrees proof, and the resulting distillate is then placed at over 100 degrees proof into new charred oak barrels from which all char has been removed for ageing. After sufficient ageing, rum from the reused cooperage is mixed with rum from the new charred cooperage so as to insure the proper color. The aged Government House Rum is then reduced with distilled water to 86 degrees proof in the bottling plant storage tanks and treated with Darco carbon in the proportion of 2.4 pounds Darco carbon per one hundred gallons of rum. After 48 to 72 hours the rum is filtered and bottled. The filtering process merely takes out foreign particles of dirt, sediment, and all the carbon which entered into the rum. The rum is then bottled, labeled, and shipped to the United States under the brand name of Government House Rum White Label.

Formula 12, Government House Rum Gold Label: In the manufacture of Government House Rum Gold Label molasses is placed in the fermenting vats. Sufficient water and sterilized yeast are added to cause proper fermentation. The fermented beer is distilled in a continuous column still at less than 190 degrees proof and the resulting distillate is then placed at over 100 degrees

proof into new charred oak barrels from which all char has been removed for [5] ageing. After sufficient ageing, rum from the reused cooperage is mixed with rum from the new charred cooperage so as to insure the proper color. The aged Government House Rum is then reduced with distilled water to 86 degrees proof in the bottling plant storage tanks and treated with Darco carbon in the proportion of 1.0 pound Darco carbon per one hundred gallons of rum. After 48 to 72 hours the rum is filtered and bottled. The filtering process merely takes out foreign particles of dirt, sediment, and all the carbon which entered into the rum. The rum is then bottled, labeled, and shipped to the United States under the brand name of Government House Rum Gold Label.

VI.

Under the provisions of the Revenue Act of 1926, section 1112, 44 Stat. 115, 26 USC 3313, a claim officially numbered DS 229893 was on December 3, 1942 filed by taxpayer with the Commissioner of Internal Revenue on Treasury form 843 for refund of portions of the taxes mentioned in paragraph III supra, it being contended therein that:

(a) The rum in question was not subject to taxation as rectified spirits under statute (c) supra; the refund claimed under this contention being \$563.84.

(b) Products of the Virgin Islands are not subject to taxation as rectified spirits; the refund

claimed under this contention being \$563.84, as in the previous contention.

(c) Aforesaid distilled-spirits tax at the rate of \$2.25, \$3, and \$4 per wine gallon should have been at the rate of \$2, per wine gallon, by virtue of the Trade Agreement Act, item (h) *supra*, and the Haitian Trade Agreement, item (i) *supra*; the refund claimed under this contention being \$9042.48.

(d) Alternatively, if the aforesaid rate of \$2 is not applicable [6] to the rum in question, then the assessed rates of \$2.25, \$3, and \$4 should have been based on the proof gallon instead of the wine gallon; the refund claimed under this contention being \$1517.88.

VII.

Said claim DS 229893 was denied by the commissioner on September 16, 1943, was thereafter reconsidered on protest of claimant, and on October 6, 1943 was again denied (San Francisco rejection schedule AT: rej. 5062, September 27, 1943).

VIII.

The involved rum is not subject to rectification tax because the Virgin Islands Act, 48 USC, statute (a) *supra*, provides for articles coming into the United States from those islands only the "internal-revenue taxes which are required to be levied, collected, and paid upon like articles imported from foreign countries," while the rectification tax in question is an internal-revenue tax which is required by 26 USC 2800 (a) (5), statute (c) *supra*,

to be paid only upon articles of domestic manufacture.

IX.

The involved rum is not subject to the rectification tax specified in 26 USC 2800 (a) (5), statute (c) *supra*, because it is not within the provision therein for "distilled spirits * * * rectified, purified, or refined in such manner, and * * * all mixtures produced in such manner, that the person so rectifying, purifying, refining, or mixing the same is a rectifier within the meaning of section 3254 (g)," 26 USC, statute (d) *supra*.

X.

The involved rum is not within the provision of said section 3254 (g) for "any spurious, imitation, or compound liquors."

XI.

The term "rectifier" as defined in said sections 26 USC 2800 (a) [7] (5) and 3254 (g) refers only to processors operating within the United States, and the involved rum, having been produced in the Virgin Islands, is not subject to any rectification tax.

XII.

If the taxable status of the rum is to be determined by the provisions of the Revenue Act of 1918, 26 USC 3350 (b), statute (e) *supra*, the "distilled spirits" tax of \$2.25 or \$3 per gallon imposed upon that portion of the rum covered by warehouse entries 964, 4623, 4790, 5307, and 5748 (identified in the appendix), should have been assessed upon

the basis of the proof gallon rather than the wine gallon, because domestic spirits originally produced at more than 100 proof are so taxed, and said section 3350 (b) prescribes for Virgin Islands products "a tax equal to the internal-revenue tax imposed in the United States upon like articles of domestic manufacture."

XIII.

If the taxable status of the rum is to be determined by the provisions of the Virgin Islands Act, statute (a) *supra*, the "distilled spirits" tax of \$2.25 or \$3 per gallon imposed upon that portion of the rum covered by warehouse entries 964, 4623, 4790, 5307, and 5748 (identified in the appendix), should have been assessed upon the basis of the proof gallon rather than the wine gallon, under the following trade agreement and legislation:

(a) The British Trade Agreement of January 1, 1939, item (j) *supra*, which relates to "rum, in containers holding each one gallon or less" (schedule IV, paragraph 802) and by article XII exempts commodities enumerated in schedule IV "from all other duties, taxes * * * or exactions of any kind, imposed on or in connection with importation, in excess of those imposed on the day of the signature of this Agreement or required to be imposed thereafter under laws [8] of the United States of America in force on the day of signature of this Agreement."

(b) The same agreement, which by article XIV provides that "the provisions of * * * Article XII

of this Agreement shall not prevent the imposition at any time on the importation of any article of a charge equivalent to an internal tax imposed in respect of a like domestic article."

(c) The Trade Agreement Act, statute (h) supra, which provides that "the proclaimed duties and other import restrictions shall apply to articles the growth, produce or manufacture of all foreign countries."

(d) The revenue laws of the United States, which by 26 USC 2800 (a) (1) and (c), statutes (b) and (f) supra, require taxation upon the proof-gallon basis for spirits which, like the rum here involved, are first distilled at over 100 proof.

XIV.

If the taxable status of the rum is to be determined by provisions of the Virgin Islands Act, 48 USC 1394, statute (a) supra, the "distilled spirits" tax should not exceed \$2 per proof or wine gallon, because:

(a) Section 1394 supra provides that upon articles coming into the United States from Virgin Islands there shall be paid "the rates * * * of internal-revenue taxes which are required to be * * * paid upon like articles imported from foreign countries."

(a) The Haitian Trade Agreement effective June 3, 1935, item (i) supra, provides by article II that the internal-revenue tax chargeable upon rum

imported in containers of 1 gallon or less shall not exceed the internal-revenue tax then in effect with regard to such merchandise, and on March 28, 1935, the date of said agreement, the internal-revenue tax payable upon imported "distilled spirits" [9] was \$2 per proof or wine gallon as provided by section 600 (a), Revenue Act of 1918 as amended by the Liquor Taxing Act of 1934, 26 USC (1934 edition) 1150 (a) (1).

(c) The Trade Agreement Act of 1934, 19 USC 1351 (a) (2), statute (h) *supra*, provides that proclaimed import restrictions, such as are contained in said Haitian Trade Agreement, "shall apply to articles the growth, produce, or manufacture of all foreign countries."

XV.

Under a long-continued practice in the internal-revenue and customs services in the Treasury Department, the provisions of said Virgin Islands Act, 48 USC 1394, item (a) *supra*, concerning internal-revenue taxes, should have been applied to the involved rum, rather than the provisions of said Revenue Act of February 24, 1919, 26 USC 3350 (a), statute (e) *supra*, relating to taxes upon Virgin Islands products.

Wherefore plaintiff is justly entitled to recover from defendant above-mentioned sum of \$563.84 plus \$9042.48, totaling \$9606.32, or alternatively said sum of \$563.84 plus \$1517.88, totaling \$2071.72, and accordingly prays judgment against defendant for one or the other of said sums, as the court shall

decide to be legally due, plus costs and interest, and for such other relief as to the court shall seem just.

FRANK L. LAWRENCE

GEORGE R. TUTTLE

Attorneys for Plaintiff

State of California,

City and County of San Francisco—ss.

Frank L. Lawrence, being first duly sworn, deposes and says that he is one of the attorneys for the plaintiff named in the foregoing complaint; that he has read the complaint and knows the contents thereof, and that the facts stated therein are true to the best of his knowledge and belief.

FRANK L. LAWRENCE

Subscribed and sworn to before me this 10th day of January 1945.

[Seal] H. M. KLISSAMBURU

Notary Public in and for the City and County of San Francisco, State of California.

My commission expires November 20, 1947. [10]

APPENDIX

Following are data concerning the seven consignments of rum mentioned in paragraphs II and III of attached complaint, including date and official customs number of each warehouse entry and of each entry for withdrawal from warehouse, date of payment of tax upon withdrawal, the commer-

cial brand name, quantity, alcoholic proof, formula number, rectification tax, distilled spirits tax, and refunds claimed; schedule data are to be interpreted thus: "White—2—286—180—2.25" means White Label brand rum, formula 2, 86 proof, 180 wine gallons at 2.25, and columns (a), (b), (c), and (d) show:

- (a) Rectification tax at 30 cents per proof gallon, all of which is claimed to be refundable.
- (b) Distilled-spirits tax at \$2.25, \$3 or \$4 per wine gallon, part of which is claimed to be refundable.
- (c) Refund claimed with distilled-spirits tax reduced to \$2 per wine gallon.
- (d) Refund alternatively claimed upon basis of distilled-spirits tax on proof gallon instead of wine gallon:

2529	10- 840	4 yr.	5—90—240	—3.00	\$	\$720.00	\$240.00	\$ 72.00
3205	10-31-40	4 yr.	5—90—240	—3.00	..... .....	720.00	240.00	72.00
4278	12- 4-40	4 yr.	5—90—120	—3.00	..... .....	360.00	120.00	36.00
(5)	Warehouse entry 359, October 9, 1941:							
2207	10-16-41	4 yr	5—90—120	—4.00	\$	\$480.00	\$240.00	\$ 480.00
2226	10-17-41	4 yr	5—90—120	—4.00	..... .....	480.00	240.00	240.00
2299	10-21-41	4 yr	5—90— 2.2	—4.00	..... .....	8.80	4.40	4.40
2480	11- 3-41	4 yr	5—90—120	—4.00	..... .....	480.00	240.00	240.00
2662	11-13-41	4 yr	5—90—237.6	—4.00	..... .....	950.00	475.20	475.20
3618	1-12-42	Gold	10—86— 60	—4.00	27.46	240.00	120.00	120.00
3669	1-14-42	4 yr	5—90—117.6	—4.00	..... .....	470.40	235.20	235.20
		Gold	10—86— 84	—4.00	27.46	336.00	168.20	168.20
(6)	Warehouse entry 547, November 25, 1941:							
3049	12- 3-41	Gold	12—86— 2	—4.00	\$.52	\$ 8.00	\$ 4.00	\$ 4.00
3121	12- 8-41	4 yr	5—90— 3.5	—4.00	..... .....	14.00	7.00	7.00
3172	12-11-41	White	5—90— 2.4	—4.00	..... .....	9.60	4.80	4.80
3595	1- 9-42	4 yr	11—86—120	—4.00	30.96	480.00	240.00	240.00
3617	1-12-42	4 yr	5—90—57.6	—4.00	..... .....	230.40	115.20	115.20
3670	1-14-42	4 yr	5—90—120	—4.00	..... .....	480.00	240.00	240.00
3985	2- 3-42	White	5—90—237.6	—4.00	..... .....	950.40	475.20	475.20
		Gold	11—86— 84	—4.00	21.67	336.00	168.00	168.00
4035	2- 6-42	Gold	12—86—120	—4.00	30.96	480.00	240.00	240.00
5613	6-11-42	4 yr	12—86— 69.6	—4.00	17.96	278.40	139.20	139.20
776	8-19-42	4 yr	5—90— 60	—4.00	..... .....	240.00	120.00	120.00
			5—90— 51.84	—4.00	230.40	115.20		

(7) Warehouse entry 5748, January 22, 1941:

		(a)		(b)		(c)		(d)	
5523	1-23-41	4 yr	5-90-396	-3.00	.....	\$1,188.00	\$396.00	\$118.80	(d)
	White	4-86-120	-3.00	.....	360.00	120.00	50.40	50.40	
	Gold	6-86- 24	-3.00	.....	72.00	24.00	10.08	10.08	
5524	1-23-41	4 yr	5-90- 84	-3.00	.....	252.00	84.00	25.20	25.20
	White	4-86-120	-3.00	.....	360.00	120.00	50.40	50.40	
	Gold	6-86- 96	-3.00	.....	288.00	96.00	40.32	40.32	
6344	3-10-41	4 yr	5-90-120	-3.00	.....	360.00	120.00	36.00	36.00
6963	4-17-41	4 yr	5-90-120	-3.00	.....	360.00	120.00	36.00	36.00
7764	5- 2-41	4 yr	5-90-120	-3.00	.....	360.00	120.00	36.00	36.00
47	7- 2-41	4 yr	5-90-120	-3.00	.....	360.00	120.00	36.00	36.00
1731	9-25-41	White	4-86- 60	-3.00	.....	180.00	60.00	25.20	25.20
1936	9-29-41	White	4-86- 60	-3.00	.....	180.00	60.00	25.20	25.20

[Endorsed]: Filed Jan. 10, 1945. [12]

[Title of District Court and Cause.]

MOTION TO DISMISS

Comes now the United States of America, defendant herein, by Frank J. Hennessy, United States Attorney in and for the Northern District of California, and moves the Court to dismiss the complaint for the following reasons:

1. The complaint fails to state a cause of action against the defendant, and the plaintiff is not entitled to the relief prayed for.
2. The facts as alleged in the complaint show affirmatively that all taxes, for the refund of which this suit has been brought, were properly and lawfully collected by the defendant from the plaintiff in accordance with the statutes and regulations then existing.

/s/ **FRANK J. HENNESSY**
United States Attorney

[Endorsed]: Filed Mar. 24, 1945. [13]

[Title of District Court and Cause.]

ORDER GRANTING MOTION TO DISMISS

The motion of defendant to dismiss plaintiff's complaint is granted.

Dated: July 20, 1945.

LOUIS E. GOODMAN
United States District Judge

[Endorsed]: Filed July 21, 1945. [14]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Clerk, United States District Court:

Notice is hereby given that Parrott & Company, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the order granting motion to dismiss which was made on July 20, 1945 by Honorable Louis E. Goodman, United States District Judge, of which order notice was given to plaintiff by mail under date of July 23, 1945 by the clerk of this court.

FRANK L. LAWRENCE

GEORGE R. TUTTLE

WALTER I. CARPENETI

Attorneys for Appellant

[Endorsed]: Filed Sept. 4, 1945. [15]

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Whereas plaintiff in above-entitled suit has appealed to the United States Circuit Court of Appeals, Ninth Circuit, from a judgment made and entered against it in said suit:

Now, therefore, we Parrott & Company, a corporation organized and existing under the laws of the state of California, as principal, and Associated Indemnity Corporation, a corporation organized and existing under the laws of state of California, as

surety, are held and firmly bound unto the United States for payment of the sum of two hundred and fifty dollars (\$250), to the payment of which well and truly to be made we bind ourselves jointly and severally by these presents.

The condition of the above obligation is such that, if plaintiff shall prosecute this appeal to effect and shall answer all costs if he fail to make good his plea, then the above obligation to be void, but otherwise to remain in full force and effect.

The undersigned surety agrees that in case of any breach of any condition hereof the court may, upon not less than ten days' notice to the undersigned, proceed summarily to ascertain the amount which the undersigned as surety is bound to pay on account of such breach, and to render judgment against it and award execution therefor, not to exceed the sum specified in this undertaking. [16]

Witness our hands and seals, this 12th day of September, 1945.

(Seal) **PARROTT & COMPANY**
By **R. H. MENZIES,**
Pres.

ASSOCIATED INDEMNITY
CORPORATION
By **CHAS. A. PREVOST**
Attorney-In-Fact

[Endorsed]: Filed Sept. 13, 1945. [17]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

In accordance with number 75 (a), Federal Rules of Civil Procedure, appellant hereby designates the following documents for inclusion in the record on appeal in above-entitled case:

- (1) The complaint.
- (2) Defendant's motion to dismiss.
- (3) Order granting motion to dismiss.
- (4) Notice of appeal.
- (5) Bond for costs on appeal.
- (6) This designation of contents.

San Francisco, September 13, 1945.

FRANK L. LAWRENCE

Attorney for Appellant

Receipt of a copy of above document on this 13th day of September, 1945, is hereby acknowledged.

FRANK J. HENNESSY

United States Attorney

[Endorsed]: Filed Sept. 13, 1945. [18]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor,

It Is Hereby Ordered that the Appellant herein may have to and including November 23, 1945, to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated: October 13, 1945.

LOUIS E. GOODMAN

United States District Judge.

[Endorsed]: Filed Oct. 15, 1945. [19]

District Court of the United States
Northern District of California

**CERTIFICATE OF CLERK TO TRANSCRIPT
RECORD ON APPEAL**

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 19 pages, numbered from 1 to 19, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of Parrott & Company, a corporation, Plaintiff, vs. The United States of America, Defendant No. 24255-G, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on ap-

peal is the sum of \$3.05 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 20th day of October, A.D. 1945.

[Seal]

C. W. CALBREATH,
Clerk

By E. VAN BUREN

Deputy Clerk [20]

[Endorsed]: No. 11168. United States Circuit Court of Appeals for the Ninth Circuit. Parrott & Company, a Corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed October 24, 1945.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals for
the Ninth Circuit

No. 11168

PARROTT & COMPANY, a Corporation,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

STATEMENT OF POINTS ON APPEAL

For a statement of points on which it intends to rely in this appeal appellant asserts that the court below erred in the following respects:

- (1) In granting defendant's motion to dismiss the complaint herein.
- (2) In failing to hold that the Virgin Islands Act of 1917, 48 USC 1394, providing the same internal taxes upon merchandise coming into the United States from those Islands as those levied upon "like articles imported from foreign countries," was not superseded by the Revenue Act of 1919, 26 USC 3350 (a), which provides for such merchandise the same taxes as "upon like articles of domestic manufacture."
- (3) In failing to hold that a domestic tax of 30 cents per proof gallon, imposed under 26 USC 2800 (a) (5) and known as a "rectification" tax, had been illegally imposed in this case upon rum produced in the Virgin Islands and brought into this country from those Islands.

(4) In failing to hold that the involved rum had not been rectified and had therefore been illegally taxed as such under 26 USC 2800 (a) (5) supra and 26 USC 3254 (g) relating to spirits produced by a rectifier.

(5) In failing to hold that the terms "rectification," "rectified," and "rectifier," as used in statutes above cited relate only to processing within the United States and therefore the rectification tax is not applicable to products of the Virgin Islands.

(6) In failing to hold that the rum is not within the provision in section 3254 (g) supra for "spurious, imitation, or compound liquors."

(7) In failing to hold that, if the rum is taxable upon the same basis as "like articles imported from foreign countries" as provided in the Virgin Islands Act supra, then the "distilled-spirits" tax under 26 USC 2800 (a) (1).

(a) Should have been levied on the basis of the proof gallon rather than the wine gallon, under the British Trade Agreement of January 1, 1939, 54 Stat. 1897, and the Trade Agreement Act of June 12, 1934, 19 USC 1351; or:

(b) Said distilled-spirits tax should have been at the rate of \$2 per wine gallon, under the Haitian Trade Agreement of June 3, 1935, 49 Stat. 3737, and the Trade Agreement Act supra.

(8) In failing to hold alternatively that, if the rum is taxable upon the same basis as "like

articles of domestic manufacture" under 26 USC 3350 (a) supra, then the basis of said "distilled-spirits" tax should have been the proof gallon rather than the wine gallon.

(9) In not giving effect to a long-continued administrative construction of the Virgin Islands Act supra under which merchandise from the Islands was taxed at the rates provided for "like articles imported from foreign countries," instead of at the rates provided by 26 USC 3350 (a) supra for "like articles of domestic manufacture."

(10) In refusing plaintiff the right to trial wherein pertinent administrative practice under the Virgin Islands Act and rectification statutes supra and material commercial understanding of the phrase "spurious, imitation, or compound liquors," in 26 USC 3254 (g) supra, would have been established.

San Francisco, November 5, 1945.

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Attorneys for Appellant.

Receipts of copies of above document this 5th day of November, 1945, is hereby acknowledged.

FRANK J. HENNESSY,
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By ALBERT S. GUERARD
Assistant United States Attorney.

[Endorsed]: Filed November 5, 1945. Paul P. O'Brien, Clerk.

